Center for **Children**'s Advocacy

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TESTIMONY OF THE CENTER FOR CHILDREN'S ADVOCACY TO THE CHILDREN'S COMMITTEE IN SUPPORT OF H.B. 6399 AN ACT CONCNERING CHILDREN IN THE JUVENILE JUSTICE SYSTEM

February 21, 2013

This testimony is submitted on behalf of the Center for Children's Advocacy in support of H.B. 6399, **An Act Concerning Children in The Juvenile Justice System**. The Center for Children's Advocacy (CCA) is a non-profit legal services organization affiliated with UCONN School of Law dedicated to protecting the rights of our state's most vulnerable youth. Through our Team Child Juvenile Justice and Truancy Court Prevention Projects, we provide individual and systemic representation to youth at risk of and in direct contact with the juvenile justice system. Through our Disproportionate Minority Contact (DMC) Reduction Projects, CCA partners with local stake holders in Hartford and Bridgeport, as well as our national partner, the Center for Children's Law and Policy, to develop strategies to reduce the disproportionate representation of children and youth of color in the juvenile justice system.

It is CCA's position that this important Act will, among other things, **end the unnecessary and harmful shackling of youth** in the juvenile justice system, **provide credit to youth for time they have spent being detained before disposition of their juvenile matters** and **ensure the automatic erasure of juvenile records** of youth whose delinquency or family with service needs matters were dismissed or more than two (2) years old.

We support this Act for the following reasons:

First, ***Section 1*** of this bill will end the unnecessary shackling of youth when they have shown that they pose no safety risk at all.

- It is no secret that shackling **harms our youth**. Not only is it counterproductive to the rehabilitative efforts of the juvenile justice system, but it can serve to re-traumatize youth who have already experienced debilitating childhood trauma.

- **The Judicial Department's present policy to address shackling** is not implemented consistently, and often final decisions to shackle a youth are being made by judicial marshals, not the individuals who are aware of the youth's background and history.

- **It is essential that serious consideration be taken before deciding to place shackles on youth**. Section 1 of this bill will place the decision to shackle a youth directly **within the judicial authority's purview** for any youth that has

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not yet been committed delinquent. By doing so, it will help ensure that youth are not unnecessarily traumatized or criminalized.

Section 2 of this bill will ensure that a child's commitment be reduced by the amount of time already spent in detention prior to their matter being disposed of.

- Every minute that a child spends while locked up, whether it is in a juvenile detention center, the Connecticut Juvenile Training School or a correctional facility, is a **deprivation of a liberty interest** to that child. That such detention is a deprivation of a child's liberty has been clearly established by the U.S. Supreme Court in the landmark case on juvenile rights, In re Gault, 387 U.S. 1 (1967). The impact of the deprivation is **not somehow mitigated or lessened because it occurred prior to disposition** of the child's juvenile matter. In fact, this pretrial deprivation is arguably more damaging, as it can erode a child's due process rights. (See below.)

- It is a fact that children awaiting disposition of their juvenile matters here in Connecticut spend **an inordinate amount of time being detained while their matter is pending.**[1] While there is no fundamental right to credit for time served presentence/disposition, **denying youth the opportunity for pretrial credit often leads to a denial of due process.** To carry out a vigorous defense of their case, it is often necessary for a juvenile defendant to seek delays in his or her proceedings. These delays lead to the child being detained for more time, without the opportunity to receive credit for any of that time. The inability to seek pretrial credit for time served overshadows a child's juvenile court proceedings by placing an overwhelming burden on the child, encouraging the child to agree to a guilty plea rather than exercise his/her constitutional rights. Just as the cognitive development of a child is factored in when lessening the weight of a child's confession after his or her interrogation, it must also **be considered when deciding whether to give a child pretrial credit.** Children, on account of their level of cognitive development, are inclined to over-value the present or the "now." In other words, given their level of cognitive development, they may be more inclined to take a plea if they know that they have no option to secure credit for time served. For this reason alone, credit should be given for time served pre-disposition.

- Data also strongly suggests that **youth of color** here in Connecticut wait in detention longer than other youth, and **are most negatively impacted by lack of credit** for this time that has already been spent away from their homes and their communities. For example, data shows that African American youth spend an average of 78 days in detention awaiting placement, while Hispanic

1 According to figures from the *Connecticut Behavioral Health Partnership* from the 2012 calendar year collected in furtherance of CCA's DMC projects, the average number of days a child awaits placement while in detention is 63 days. This number actually fluctuates based on the child's race.

youth spend an average of 61 days, and white youth an average of 55 days.[2] So, although a youth may spend over six weeks being detained prior to any disposition of his or her case, and although this time is often directly the result of pending assessment necessary for their disposition, the **youth gets no credit for this time** towards the total length of their post-disposition commitment. In this way, the punishment for many of these youth, especially youth of color, is unnecessarily and unjustly extended beyond what their delinquency commitment would otherwise legally be.

Finally, ***Section 4*** will serve to ensure that the juvenile records of youth are automatically erased for delinquent youth who have not been involved in the system for two years,[3] and more importantly, for youth whose delinquency and family with service needs matters were dismissed.

- The law currently only allows for youth to petition to have their records erased, **a cumbersome process of which many youth and families are unaware.**

- Records of juvenile delinquency, though confidential, **still negatively impact youth**. They are often **accidently or inadvertently reported, resulting in negative outcomes for these youth** and the exclusion of these youth from educational opportunities or employment opportunities that would otherwise be open to them.

- Automatic record erasure **will protect all youth**, outside of those classified as serious juvenile offenders, who have been involved with the juvenile justice system from any inadvertent disclosure that could serve to harm them in the future.

Each of the aforementioned measures will enhance the fairness with which the youth in the juvenile justice system are treated and further ensure their existing rights are protected. For these reasons, CCA urges you to pass **H.B. 6399, An Act Concerning Children in the Juvenile Justice System.**

Thank you for your time and consideration.

Respectfully submitted,

Marisa Mascolo Halm, J.D.
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2 This information is also from the *Connecticut Behavioral Health Partnership* in support of CCA's DMC project and based on a review of youth awaiting placement from the 2012 calendar year.

3 If this law is passed, the records of youth who are serious juvenile offenders may continue be erased only upon petition and subsequent court order.